

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/000309/SG/12557
Appeal No. CIC/SM/A/2011/000309/SG

Relevant Facts emerging from the Appeal:

Appellant : Mr. P. C Srivastava,
A 3/3, Vasant Vihar,
New Delhi

Respondent : PIO & Superintendent of Police,
Economic Offences Wing,
Central Bureau of Investigation,
III Floor, A- Wing, Rajaji Bhawan,
Besant Nagar, Chennai- 600090

RTI application filed on : 06/07/2010
PIO replied on : 28/07/2010
First Appeal filed on : 09/08/2010
FAA order of : 31/08/2010
Second Appeal received on : 08/02/2011

The Appellant has sought information about the charge sheet filed against RIL by CBI in the Call Re-routing case.

S. No.	Information sought	Reply of Public Information Officer (PIO)
1.	Date on which case was registered against RIL.	30/08/2006
2.	Who was the Investigating Officer?	(a) Shri Syed Bazlullah, DSP; and (b) Shri K. Jayaraman, SP
3.	Date on which investigation was completed.	29/04/2010
4.	Date on which charge sheet was filed in the Chennai Court.	25/06/2010
5.	Why were names of Mukesh and Anil Ambani not included in the charge sheet?	As the information sought in the case would impede the process of prosecution of offenders, the same is denied under Section 8(1)(h) of the RTI Act.
6.	The entire reasons may be given to me.	-do-
7.	Whether opinion was sought from the Director (Prosecution), CBI to exclude the names of Mukesh and Anil Ambani from the charge sheet.	The legal opinion is sought by an officer in his fiduciary relationship with the Law Officer and the same cannot be disclosed to a third party and hence denied under Sections 8(1)(e) and 8(1)(h) of the RTI Act.
8.	If so, details of opinion given by the Director (Prosecution), CBI may be given.	-do-

Grounds for First Appeal:

Complete information not provided. The Appellant wanted information about why the owners Mr. Mukesh and Anil Ambani were protected from the prosecution charges.

Order of First Appellate Authority (FAA):

S.No.	Information sought	Reply
1.	The reason why Mr. Mukesh D. Ambani who was chairman of the company at the time the offence was committed has not been named in the charge sheet as an accused?	It is to inform (you) that the case was finalised after obtaining legal opinion and evaluation of evidence. The information sought was confidential and cannot be disclosed as it would impede the process of prosecution. Hence, rejected under Section 8(1)(h) of the RTI Act.

Grounds for Second appeal:

Dissatisfied with the order of the FAA.

Relevant Facts emerging during hearing held on May 23, 2011:

The following were present:

Appellant: Mr. P. C Srivastava;

Respondent: Ms. Thenmozhi, PIO & SP through video conference.

“The Appellant stated that he wanted information on queries 5 and 6 of the RTI application. He further stated that the ruling of the High Court of Delhi (the “**Delhi HC**”) in CrI.M.C. 1343 of 2007 on 08/10/2010 backed his plea that the information sought can be revealed.

On the other hand, the PIO contended that the information sought under queries 5 and 6 was exempted under Section 8(1)(h) of the RTI Act. The PIO stated that the case pertained to Reliance Infocom Limited (“**RIL**”) and that CBI was prosecuting certain directors of the company under Section 120 B of the IPC read with Sections 20/ 20(A) /21 /25(C) /27 of the Indian Telegraph Act, 1885 and Sections 65 /66 /85 of the IT Act, 2000 and other substantive offences. The PIO stated that the investigation was over. The PIO further stated that charge sheet had been filed and prosecution was underway in CC No. 2938/10 in the Court of ACMM, Chennai.

The Commission asked the PIO whether reasons for not prosecuting Mr. Mukesh Ambani and Mr. Anil Ambani were available on record. The PIO, in response, stated that CBI had decided to prosecute certain directors and the reasons for not prosecuting Mr. Mukesh Ambani and Mr. Anil Ambani were on record. However, disclosing such information would provide clues to other persons accused in the said case by which they would be able to argue why they should also not be charged.

The Commission reserved the order at the hearing held on 23/05/2011.”

Decision announced on 26 May 2011:

The Appellant, under queries 5 and 6 of the RTI application, has sought the reasons why names of Mr. Mukesh Ambani and Mr. Anil Ambani were not included in the charge sheet in the relevant case. The PIO has stated that though the reasons were available on record, disclosure of the same was exempted under Section 8(1)(h) of the RTI Act. It must be noted that as per Section 19(5) of the RTI Act, in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the PIO who denied the request.

Section 8(1)(h) of the RTI Act provides as follows:

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

...

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;”

Section 8(1)(h) of the RTI Act exempts disclosure of information which would impede the process of investigation or apprehension or prosecution of offenders. Merely because the process of investigation or prosecution of offenders is continuing, the bar stipulated under Section 8(1)(h) of the RTI Act is not attracted; it must be clearly established by the PIO that disclosure of the information would impede the process of investigation or apprehension or prosecution of offenders. Ravindra Bhat, J. of the Delhi HC in Bhagat Singh v. CIC W.P. (C) No. 3114/2007 has observed as follows:

“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

*14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sesha Reddy* 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.” (Emphasis added)*

It is clear from the ruling of Ravindra Bhat, J. that the PIO, who is denying information under Section 8(1)(h) of the RTI Act, must show satisfactory reasons as to why disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders. These reasons must be relevant and the opinion of the PIO that by disclosing the information prosecution of offenders shall be impeded should be reasonable. The opinion of the PIO must be based on some material and cannot be a mere apprehension not supported by any evidence.

The right to information is a fundamental right of the citizens. The RTI Act was enacted with the spirit of ensuring transparency and access to information giving citizens the right to information. According to the RTI Act, information may be exempted from disclosure in accordance with Sections 8 and 9 only and no other exemptions can be claimed while rejecting a demand for disclosure. The RTI Act is premised on disclosure being the norm, and refusal, the exception. It is clearly laid down in the RTI Act that the onus to prove that a denial of a request for information was justified shall be on the PIO who denied the request. Therefore, while denying a request for information under the RTI Act, the PIO must have cogent reasons for doing so which must necessarily come within the purview of Sections 8 and 9 of the RTI Act.

In the instant case, the PIO has relied on Section 8(1)(h) of the RTI Act and argued that disclosing such information would provide clues to other persons accused in the relevant case by which they would be able to argue why they should also not be charged and this would impede the prosecution of offenders. The argument raised by the PIO to justify the denial of information on the basis of Section 8(1)(h) of the

RTI Act appears to be nothing more than a mere apprehension on her part. The PIO has failed to produce or place reliance on any cogent evidence or material before the Commission on the basis of which she can establish that disclosure of information would impede the prosecution of offenders. In other words, the PIO has failed to discharge the burden placed upon her under Section 19(5) of the RTI Act to prove that the denial of information under Section 8(1)(h) of the RTI Act was justified. Moreover, this Commission is unable to understand how lack of evidence against a person can be used by another person against whom evidence has in fact been found leading to filing of charge sheet against the latter. On this basis, the Commission rejects the contention of the PIO that the information sought was exempted under Section 8(1)(h) of the RTI Act. The PIO has not been able justify how disclosing the information would impede the process of prosecution of offenders.

The Appeal is allowed.

The PIO is directed to provide the information as available on record on queries 05 and 06 to the Appellant **before 20 June 2011.**

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
26 May 2011

(In any correspondence on this decision, mention the complete decision number.)(SG)